Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	IB Docket No. 95-22
Market Entry and Regulation of	)	RM-8355
Foreign-Affiliated Entities	)	RM-8392

REPLY COMMENTS OF U S WEST, INC.

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I. INTRODUCTION AND SUMMARY

U S WEST, Inc. ("U S WEST") herein replies to the comments filed in this proceeding.[1] In this reply,[2] we express our concern that the Federal Communications Commission's ("Commission") proposed Effective Market Access ("EMA") standard will be viewed by foreign governments and investors as an additional barrier to market entry in the United States, could precipitate

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[1] Commentors referenced herein include AirTouch Communications, Inc. ("AirTouch"), Arch Communications Group ("Arch"), The British Government ("British Gov't"), BT North America Inc. ("BT North America"), Cable & Wireless, Inc. ("CWI"), Cellular Telecommunications Industry Association ("CTIA"), Citicorp, Columbia Communications Corporation ("Columbia"), Directorate General of Posts and Telecommunications (France) ("DGPT"), DOMTEL Communications, Inc. ("DOMTEL"), E.F. Johnson Company ("E.F. Johnson"), *f*ONOROLA Corporation ("*f*ONOROLA"), France Télécom ("FT"), GTE Service Corporation ("GTE"), J. Gregory Sidak ("Sidak"), K&S International Communications, Inc. ("K&S"), Korea, LDDS Communications, Inc. ("LDDS"), Loral/QUALCOMM Partnership, L.P. ("LQP"), Motorola, Inc. ("Motorola"), NYNEX Corporation ("NYNEX"), Organization for International Investment ("OFII"), Secretary of Communications and Transportation of Mexico ("Mexico"), Sprint Communications Company L.P. ("Sprint"), Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD"), Teleglobe, Inc. ("Teleglobe"), Telex-Chile, S.A. ("Telex-Chile"), and TRW, Inc. ("TRW").

[2] These Reply Comments are filed pursuant to the Commission's NPRM. See In the Matter of Market Entry and Regulation of Foreign-affiliated Entities, IB Docket No. 95-22, RM-8355, RM-8392, Notice of Proposed Rulemaking, FCC 95-53, rel. Feb. 17, 1995 ("NPRM") and Order, DA 95-502, rel. Mar. 15, 1995, extending filing dates.

retaliation, and could well add additional confusion and delay to market entry situations that, right now, should be streamlined and made more efficient. Thus, we support those commentors who oppose the formal adoption of EMA. Rather, like others, we would prefer to see the Commission adopt practices and procedures that reflect a presumption in favor of foreign entry.

In the alternative, we stress that EMA, if adopted, should be implemented in a manner that does not increase the burden currently borne by foreign applicants. Indeed, if EMA should be implemented, its implementation should be crafted such that reasonable presumptions are created in favor of foreign entry, with rigorous scrutiny of EMA issues confined to those situations where the facts raise significant and material public interest issues with respect to the entry itself.

In 1994, U S WEST advised the Commission that our "experience [had been] that the best means to open foreign markets to U.S. firms is to point to the openness of the U.S. market to foreign firms. This potent argument cannot be used if, in a given circumstance, the U.S. market is not open to foreign investment."[3] We agree with commentors, such as AirTouch, that the ultimate outcome of this proceeding should be to broaden "opportunities for foreign communications carriers to provide services in the U.S.[.]"[4]

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[3] See In the Matter of Petition of Cable & Wireless, Inc. for a Declaratory Ruling Concerning the Application of Section 310(b)(4) of the Communications Act to United Kingdom Operations, File No. ISP-94-002, U S WEST Comments, filed Feb. 14, 1994, at 1, n.2 ("U S WEST Cable & Wireless Comments").

[4] AirTouch at 1.

Like LDDS, and others,[5] U S WEST fully supports the Commission's goals in this proceeding. They are laudable pro-competitive goals, consistent with long-standing U.S. policy.[6] Like LDDS, we believe "that the best means to achieve these goals is not for the U.S. to restrict access to the U.S. market, but for the U.S. to lead by example [in] opening up its market."[7]

We share the concerns of commentors such as Teleglobe, who says it well:

> After more than a decade of leading world telecommunications markets to greater openness -- boldly and quite successfully -- by example, the Commission now proposes to abandon its leadership as insufficiently productive and adopt the approach of reciprocal tightening of markets. Foreign carriers and governments logically and inevitably would interpret the imposition of such a test as an additional barrier to entry and as an effective "closing" of the U.S. market. Such a step away from the United States' historic leadership role in telecommunications liberalization and in promoting open markets could reverberate negatively around the world. As many countries look to the United States as a model for reforming their regulatory structures, they could decide to follow the Commission's example and take similar market-closing steps. Such a dynamic would stall the current steady progress toward open markets and delay the benefits of global competition. With a global consensus emerging in favor of competition and allowing foreign entry into telecom markets, now is not the time for the Commission to erect new entry restrictions.[8]

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[5] See LDDS at 5; NYNEX at 3; Teleglobe at 3; TRW at 1-2, 3; LQP at 3-4; K&S at 2-3; Columbia at 2; British Gov't at 1; *f*ONOROLA at 3, 14; Sprint at iii, 1; FT at 1.

[6] DOMTEL at 2 ("The U.S. telecommunications regulatory policy consistently has been in favor of open entry and competition.")

[7] LDDS at 1, 2, 5, 8. See also Mexico at 12 ("In fact, the United States has demonstrated positive leadership by example around the globe for a number of years, and there are increasing indications that its existing open entry model for telecommunications is being adopted in more and more countries."); DOMTEL at 2 ("The Commission's approach has been to 'lead by example' and it has worked."); Teleglobe at 4-5; NYNEX at 4, 12.

[8] Teleglobe at 4-5.

U S WEST supports those commentors who urge the Commission to remain pro-competitive with respect to the matter of foreign entry, not just with respect to its actions but its words and formal policies, as well. Like others, we are concerned that the promulgation of a formal EMA standard, while flexible and non-dispositive, will be viewed as an additional barrier to foreign market entry, either as a result of the promulgation of the standard itself or because being "put to proof" regarding the standard will be viewed as a step backward and a new or additional barrier to access to U.S. markets.[9] In turn, that perception, inaccurate though it may be, could well lead to foreign government retaliation.[10]

Market entry and market barriers are, first and foremost, matters of governmental sovereignty and trade negotiations, rather than regulatory issues.[11] While the Commission certainly has both the expertise and the jurisdiction to be-

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[9] NYNEX at 2 (EMA standard could be perceived as "a 'closing' of U.S. markets"), 7-8; Teleglobe at i (EMA application would invariably be perceived by foreign carriers and governments as a closing of U.S. markets), 5-4, 10-11, 24; DOMTEL at 2-3 (arguing that the Commission's EMA proposal would send the wrong signal to foreign governments and is working at "counter-purposes" to the Commission's past support of foreign carrier entry); Mexico at ii, 11-12, 15; British Gov't at 1, 6-7; Telex-Chile at 3; *f*ONOROLA at 3-4, 5, 14; TLD at ii, 30-37. Compare FT at 3.

[10] See, e.g., OFII at 3; LDDS at 1 ("Any movement by the U.S. government to erect additional entry barriers to foreign carrier entry into the U.S. market, or to foreign carrier investment in U.S. carriers, may well backfire, and result in foreign markets being closed to U.S. carriers and investment."), 8; NYNEX at i ("We believe that, instead of promoting competition and improving the ability of U.S. carriers to participate in global markets, the Commission's proposal may incite foreign administrations to impose retaliatory measures."), 1-2, 5, 7-10, 14; Mexico at 13; Teleglobe at 4-5, 6, 24, 28; Telex-Chile at 1, 3-4; *f*ONOROLA at 5; Sprint at 15-18, 20-23.

[11] Compare LDDS at 1-2 ("It is a problematic undertaking for the U.S. government to use its own regulatory policies as a means of imposing pressure upon foreign countries to make their telecommunications markets more open to U.S. carriers."), 8, 9; Sprint at 5, 10, 11, 20-26; DGPT at 2; FT at 19, n.16; TLD at i-ii, 5-7, 14-22, 34-37; OFII at 4.

come involved in market entry decisions affecting the United States, prudence suggests that the articulation of formal Commission policies in that area refrain from suggesting either unilateral mandates or provincial territorialism. Market entry policies are best devised through the diplomatic behaviors of negotiation,[12] cooperation and conciliation.[13] The implementation of those policies is best left to regulatory entities.

In the instant situation, U S WEST urges the Commission to refrain from taking any regulatory action that would compromise the long-standing U.S. open entry philosophy. The opening of foreign markets is more likely to occur through the continued openness of the United States markets than through attempting to structure even the most flexible of quid pro quo regulatory regimes. Regardless of the Commission's intentions, or its prose, the formal adoption of an EMA standard will likely send the wrong signal to foreign governments and investors.

U S WEST believes that the best way to achieve the Commission's articulated goals in this proceeding is for the Commission to "adopt policies governing foreign carrier entry into the U.S. market that create 'an incentive for foreign administrations with currently closed markets to consider opening their markets.'"[14] We believe that EMA is an untested, and probably unreliable, vehicle in this respect.

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[12] Compare NYNEX at 9-10; CWI at ii, 3-4; Mexico at 12, 15; British Gov't at 6, 7-8; Korea at 1, 3.

[13] Mexico at 3-4, 12, 16; OFII at 2; Teleglobe at 9-10.

[14] NYNEX at 4, quoting from the NPRM ¶ 25 (emphasis added).

We believe that a process that creates a presumption that open entry is in the public interest, placing the burden on those disputing the presumption, is a far better process to deploy in market entry decisions. It is consistent with the United States' leadership role in the area of market entry and sends a strong anti-protectionist message to the world's governments. The Commission should adopt such a model, rather than the EMA model proposed.

II. THE EMA STANDARD IS A POOR VEHICLE FOR PROMOTING OPEN MARKETS OVERSEAS

The need for an EMA standard in the first instance is less than clear. The Commission currently has sufficient authority under both Sections 214 and 310(b)(4) to engage in public interest determinations. While the processes associated with each may differ as to who bears what burdens in assessing the public interest,[15] the Commission is currently empowered to take into consideration the market access environment of the foreign entrant.

While the Commission suggests that adoption of EMA could produce greater uniformity, standardization, clarity, and predictability to its deliberative processes, from the filed comments themselves, U S WEST seriously doubts that such would be the case. Rather, we see the insinuation of a "formal" EMA standard (having at least six factors), which is not determinative, in any event,[16] as having the potential

[15] See discussion regarding Section 310(b)(4) at Section IV, infra.

[16] NYNEX at 7; LDDS at 10-11; Korea at 2.

to introduce even more contention and delay[17] to the entry applications processes than is currently the case. We do not deem this to be pro-competitive and believe that it could be looked upon as a step backward.[18]

It is clear from the filed comments that the precise contours of EMA are not well defined or understood. While the Commission rejected AT&T's proposal that "comparable market access" be utilized as a market entry consideration, on the grounds that it was too rigid and could be construed to require that foreign governments have entry regulations identical to those found in the United States,[19] U S WEST believes that many commentors construe the EMA standard as accomplishing something quite similar. In part, due to the Commission's fairly narrow "definition" of EMA,[20] the EMA standard has been characterized as one describing "comparability,"[21] "reciprocity,"[22] "symmetry,"[23] and "equivalent"[24] market access.

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[17] See LDDS at 10-11; NYNEX at 3; Teleglobe at 10-11.

[18] See note 9 and accompanying text, supra.

[19] See NPRM ¶ 49. See also NYNEX at 5; CWI at 4, n.9; GTE at 3-4; Citicorp at 1-2; *f*ONOROLA at 15; BT North America at 4; Teleglobe at 13.

[20] See NPRM at 38 ("This access must exist at the time of [foreign] entry, or in the near future.") But see further articulation of factors to be assessed in determining the actual presence of EMA at id. ¶ 40.

[21] AirTouch at 2, 4, 6.

[22] NYNEX at 1-2; LQP at 4, 8; Columbia at 2-3; *f*ONOROLA at 17; Arch at 6; E.F. Johnson at 2; CWI at 4, n.9; Teleglobe at 30, 32; Sprint, passim. And compare OFII at 3.

[23] Columbia at 2.

[24] K&S at 3-4, n.3, 6-7, 9. Compare Columbia at 1 ("equal access problems").

With such a divergence of opinion on what the EMA standard really means, it is difficult to imagine that it can be implemented in a globally-friendly fashion.[25]

Furthermore, the "flexible" manner in which the EMA standard is meant to be applied actually cuts against the "uniformity" and "standardization" that the Commission hopes to advance through its adoption. Utilization of the EMA standard drives the Commission to case-by-case considerations.[26] While the "factors" to be considered in applying the standard might be "uniform," their application most surely will not be. And, the added fact that the standard is but a benchmark, allowing other factors to override the tentative conclusion driven by application of the standard itself,[27] means that certainty, clarity, and swift processing of applications are certain to be compromised.[28] As a result, application of the standard could well

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[25] Teleglobe at 14-15 ("According to the Commission, the approach proposed in the Notice, in contrast to AT&T's, does not require 'mirror reciprocity.' While less mechanistic than AT&T's approach, the Commission's determination of whether [EMA] exists would be based on analysis of highly specific and detailed aspects of other countries' regulatory structures. . . . [T]he combined factors clearly contemplate a regulatory structure in the foreign country that largely mimics the U.S. regulatory regime.") (footnote omitted).

[26] For example, NYNEX opposes the adoption of the EMA standard, out of concern that its "case-by-case" "flexible" approach does not actually promote the Commission's global pro-competitive goals. NYNEX at 2-3 ("NYNEX agrees with the Commission that rote application of the [EMA] test as the basis for evaluating foreign carrier applications would not serve the public interest. We note, however, that a flexible approach would not appear to reduce 'uncertainty in the market,' result in a 'uniform standard' for regulating access to the U.S. market,' or be 'administratively more efficient and less of a burden on the Commission's resources' all of which are qualities the Commission ascribes to its proposed approach.") (footnote omitted). See also id. at 8. And see DOMTEL at 3-6; Teleglobe at i, 4, 21-23; Mexico at 11-12; FT at 8-9.

[27] See LDDS at 3, 10-11; DOMTEL at 4; Teleglobe at 13-14. And compare Citicorp at 2.

operate not to promote ease of entry, but to retard it.[29] Furthermore, application of EMA, discretionary-bound as it is, could well motivate foreign governments to replicate it,[30] perhaps with unfortunate consequences.

Finally, U S WEST is intuitively troubled about the adoption of a standard which inextricably intertwines the ability of a foreign investor or carrier to enter U.S. markets with the governmental policies of the country from which the foreign participant hails.[31] We are concerned that, depending upon the ultimate phrasing of the standard and its subtending implementation details, imposition of the EMA standard might be seen as a unilateral strike in a global market arena -- fodder for allegations and inaccurate perceptions about the United States' genuine openness to international competition. A misperception in this critical area could well lead to foreign government retaliation.[32]

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[28] DOMTEL at 4 (the Section 214 process right now, without the application of the EMA standard, already can take two years for small foreign carriers), 7; Teleglobe at i, 20-23 (the current process needs revision); LDDS at 10-11; Telex-Chile at 2-3; *f*ONOROLA at 4-5, 8-9.

[29] NYNEX at 2; British Gov't at 1-2.

[30] See DOMTEL at 3 ("the NPRM adds layers of tests and new levels of interagency consultancy to an existing system that is already cumbersome and results in substantial delay. Moreover, the proposed elements are so subjective that they effectively create an insurmountable barrier for new small foreign carriers."), 5-6, 7; NYNEX at 5-6, 8-9. See also Mexico at 11-12; Teleglobe at 4-5; CTIA at 5.

[31] See OFII at 3 ("It would be a serious mistake to link the removal of investment restrictions in Section 310(b) to market access for telecommunications services. . . .It would hold foreign-owned firms hostage to the policies of their home governments, policies which they have no control over."). See also GTE at 3, n.4 ("GTE disagrees with the Commission's premise that foreign carriers necessarily have significant influence in forcing liberalization of markets in their own countries. Often, the foreign government's policies are determined without regard to the carrier's input."); Mexico at 13; British Gov't at 6.

[32] See note 10, supra.

III. A PRESUMPTION OF OPEN ENTRY SHOULD DRIVE THE COMMISSION'S PUBLIC INTEREST ANALYSES

While U S WEST does not see the need for a formal adoption of an EMA standard, and indeed can foresee certain unfortunate consequences from its adoption, we appreciate that certain commentors support it. Should the Commission ultimately adopt the EMA standard, should it refrain from adopting it, or should it conclude that some middle ground is more judicious, U S WEST urges the Commission to craft both the standard and the implementation processes such that a presumption is created that open entry into the United States markets is in the public interest.[33] Opponents of such entry should bear the burden of demonstrating that the entry is antithetical to that interest.[34]

U S WEST supports the creation of such presumption, believing it the best vehicle for creating incentives for foreign governments to open their markets. A Commission-sanctioned presumption that foreign entry is not to be thwarted absent

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[33] See NYNEX at 3 ("We believe that foreign ownership of a non-controlling interest . . . should be deemed presumptively to be in the public interest.), 6. Compare *f*ONOROLA at 18-19; Sprint at iii-v, 4-5, 26-27; FT at i, 1-2, 4-5. DOMTEL at i ("the Commission should exempt all U.S.-carrier affiliates of nondominant foreign carriers from the proposed expanded 'public interest' analysis. . . . U.S.-carrier affiliates of [such] carriers would be subject to streamlined authorization procedures, i.e., a determination within six months, and a rebuttable presumption in favor of Section 214 approval."), ii (similar presumption regarding Section 310(b) proceedings), 8; AirTouch at 2, 8 (AirTouch suggests a process with respect to Section 310(b)(4) which would create a presumption of entry; a process wherein the Commission would "deny waivers only where U.S. companies are demonstrably excluded from comparable participation in [foreign] market[s]." (emphasis added)). Compare British Gov't at 3, 6-7. Creation of this presumption might require an abandonment of the EMA standard or its sparing application (NYNEX's and DOMTEL's proposals); or it might require a clear articulation of the criteria associated with the standard (AirTouch's suggestion). The end result can be reached in a number of different ways.

[34] Compare AirTouch at 8; NYNEX at 3, 6.

egregiously "closed" foreign markets sends some important messages: First, it should go far to eliminate the allegations that U.S. foreign ownership policies are highly conservative and fiercely provincial.[35] Second, it is an approach totally consistent with the philosophy of conciliation and cooperation, an approach urged by certain foreign policy makers.[36] Third, it should promote streamlined Commission processes, reducing the significant delay currently attendant to many foreign entry determinations.[37] Overall, it is a strategy based on a "win/win" theory of global competition, rather than a "lose/lose" model. And, overall, it best achieves the full realization of customer choice.[38]

Should the Commission ultimately determine to adopt the EMA standard, the Commission should circumscribe its application. The EMA standard should be employed such that its application is integrated in a process whose overall approach is that entry is presumptively in the public interest. First, as U S WEST discusses below, we do not believe that it should be a factor in Section 310(b)(4) proceedings at all, unless raised by a protestant seeking to prove that entry is not in the public interest. Second, in accordance with a presumption that entry is in the public interest, the insinuation of an EMA analysis should be targeted to those proceedings

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[35] Compare AirTouch at 3, 4; NYNEX at 2.

[36] See note 9, supra.

[37] British Gov't at 3; NYNEX at 8.

[38] Compare AirTouch at 3-4; NYNEX at 4, 10; LDDS at 6.

demonstrating a material need for its consideration.[39] The Commission should establish certain streamlined processes that do not require reference to EMA at all.[40] And, it should craft a policy and process whereby the EMA standard is employed as an affirmative element of the application process only in those circumstances which clearly call for some significant Commission insinuation or investigation. In other situations, it should be up to those arguing that EMA does not exist to provide that proceeding in the absence of EMA would harm the public interest.[41]

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[39] NPRM ¶ 64; TRW at 5; DOMTEL at i.

[40] NYNEX at ii, 2-3, 7-9, 14; CWI at iii, 10-11.

[41] NYNEX suggests that if the Commission chooses to employ the EMA standard in Section 214 proceedings that its application be constrained to those involving a controlling interest by foreign investors. NYNEX at i, 3. And see Columbia at 3. In the alternative, NYNEX suggests a type of "reciprocity" standard such that "[I]f the administration in a foreign country allows U.S. carriers to acquire interests in its domestic carriers up to a particular ownership level without prior approval," the Commission would investigate on a "case-by-case" basis only those foreign entries where the ownership level was above that allowed by the foreign national's government." NYNEX at 7. See also id. at i-ii, 3; AirTouch at 4. Compare LDDS at 9-10. Others argue that the EMA should not be employed with respect to non-dominant entry. We note that the above suggestions would have a tendency to limit the ubiquitous application of the EMA standard in ways that make some logical sense, and which would conserve Commission resources and facilitate a more speedy entry process.

In this filing, U S WEST does not take a particular position on when, precisely, the EMA standard should be applied to Section 214 proceedings. However, whatever particulars the Commission decides upon in this area, we urge the Commission to employ the standard consistent with a presumption in favor of entry. Thus, we would support a Commission policy that employed the EMA only to those circumstances clearly requiring its application. In other situations, the Commission should require those seeking to raise it to restrict entry to prove that its absence would harm the public interest.

IV. SECTION 310(B)(4) CONSIDERATIONS AND APPLICATION OF EMA

U S WEST supports those commentors who argue that EMA is unnecessary in Section 310(b)(4) applications involving radio licenses.[42] As the statute is currently written, it contains a presumption that entry is lawful.[43] Thus, a waiver applicant should not have to address EMA issues in its original application. Unless someone else raises such issues to the Commission, and the Commission deems the matters raised to warrant a refusal of the waiver, EMA issues should not be an issue in the proceedings at all. Requiring a Section 310(b)(4) applicant to become embroiled in presenting evidence on EMA issues would be contrary to the current statutory provision, and would only add or engender confusion, contention, and delay.[44]

Should the Commission not be persuaded by the argument presented above, one based on the clear language of the statute itself, and should it be persuaded by the support for the EMA standard by certain commentors addressing Section 310(b)(4) situations, U S WEST would urge the Commission to review those comments carefully. There is general agreement that the application of an EMA

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[42] See Sidak, generally; BT North America at 14, 15-16. U S WEST herein takes no position on the application of EMA to Section 310(b) and broadcast issues.

[43] See U S WEST Cable & Wireless Comments at 2, n.3 ("Foreign firms can hold an even larger indirect interest [than 25%] unless 'the Commission finds that the public interest will be served by the refusal or revocation of [a] license.' Indirect ownership interests greater than 25% are, therefore, presumptively lawful."). (Emphasis in the original.)

[44] NYNEX at 6, 8; DOMTEL at 5.

standard to a Section 310(b)(4) process should not be permitted to add delay to the process.[45] The Commission should work to streamline the current Section 310(b)(4) process. At a minimum, it should create a presumption in favor of entry, absent a foreign entity's controlling interest in the applicant[46] or establish some kind of reciprocal ownership standard[47] so that only the most serious foreign entry cases require individual and specific review. The Commission should not permit the adoption of an EMA standard, despite its "flexible" nature, to impede presumptively lawful market entry.

Additionally, the commentors addressing Section 310(b)(4) entry do not generally embrace the idea that an EMA standard should be applied in the same manner with respect to Section 310(b)(4) proceedings as the standard is applied to Section 214 ones.[48] While "supporting" the EMA standard, they suggest that a clear statement of the factors and their predictable outcomes be provided.[49]

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[45] LDDS at 11. As Motorola has stated, the Commission should "[i]ssue market access determinations as expeditiously as possible." Motorola at iii, 11.

[46] NYNEX at 7. Compare British Gov't at 7 ("We would consider it in the meantime best for the Commission to offer waivers on s.310 on a routine basis, and treat foreign companies in the same fashion as US carriers in s.214 procedures, except where the granting of such authorisations can clearly be demonstrated to offer the company in question the ability to distort competition to the detriment of the US consumer."). DOMTEL at ii (it "proposes that the Commission adopt a rebuttable presumption waiver for nondominant foreign carriers that seek to acquire up to 60% ownership interest in the holding company of a radio licensee under [Section] 310(b)(4)"), 9, 11; Sprint at iv-v, 6, 35-36; FT at 27-28.

[47] NYNEX at 3; AirTouch at 4; CTIA at 5-6, 7; TLD at iv.

[48] CWI at 9-10, 4; CTIA at 4-6 (noting that the Commission did not make clear whether the six factors to be included in a Section 214 EMA analysis would be the same for a Section 310(b) analysis and suggesting there may be certain differences that require more targeted definitions and applications based on which statutory provision is being considered). Motorola at 7.

[49] See AirTouch at 2; Motorola at iii, 10.

While U S WEST disagrees with AirTouch and others with respect to the need for, or wisdom of, incorporating an EMA standard into the Section 310(b)(4) process,[50] we support arguments for a "liberalization" of the waiver process as it is currently conducted, whether or not an EMA standard is adopted. As AirTouch and others have observed, as the Commission has historically interpreted and implemented its waiver authority under Section 310(b)(4), that section and the administrative processes associated with it have been perceived as a highly restrictive barrier to entry.[51] Thus, we agree that whatever the particular outcome in this proceeding with respect to the adoption of an EMA standard in Section 310(b)(4) situations that the "waiver criteria [should be] clearer and more consistent."[52]

If the EMA becomes "codified" in the Commission's Rules as a part of the Section 310(b)(4) waiver process, it should be fashioned so as to avoid the perception that the United States is unilateral and overreaching in the area of market entry controls, a perception that could precipitate additional or new foreign government

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[50] AirTouch endorses such an application, while U S WEST considers it unnecessary. See AirTouch at 4 ("Effective market access should be the primary consideration and must be based on specific market segments."; "Use of the proposed [EMA] standard is an appropriate vehicle for achieving the Commission's goals. . . . Formal incorporation of a market access test in the Commission's waiver process will provide greater consistency in granting licenses to global partnerships, allow for greater certainty on the part of foreign companies seeking to increase equity participation in U.S. markets, and lead to more symmetric and open regulations overseas."). See also E.F. Johnson at 2-3 (supporting the adoption of EMA on the grounds that it will "loosen the foreign ownership restrictions" and will "liberalize telecommunications ownership restrictions").

[51] AirTouch at 1; LQP at 7-8; CTIA at 3-4; Teleglobe at 25 ("For instance, several U.S. carriers have acquired interests in cellular telephone licensees in Eastern Europe countries that exceed the foreign ownership levels in U.S. radio licensees under Section 310(b) of the Communications Act."), 28; OFII at 2, 4; Sprint at 20-21.

[52] AirTouch at 2. See also Motorola at iii, 10 (arguing that EMA must be applied in a Section 310(b)(4) proceeding in a "manner that promotes predictability and certainty.").

retaliation.[53] Additionally, it should be accompanied by a list of particulars which would provide potential applicants with a clear statement as to what proof is required to address the standard and predictable outcomes stemming from that proof. The Commission should "[s]pecify all factors that will be considered in the analysis."[54] As AirTouch observed, such clarity and consistency would likely "encourage other governments to adopt licensing criteria which are similarly open, objective, and nondiscriminatory."[55] Again, the United States leading by example.

V. CONCLUSION

U S WEST encourages the Commission to continue to "lead by example" in the area of open entry into United States markets. While, clearly, there will be occasions in which the Commission will be required to engage in rigorous analyses with respect to the propriety of foreign entry, we encourage the Commission to craft practices and procedures that reduce, rather than increase, such entry. Thus, we support the creation of reasonable presumptions that foreign entry is generally in the public interest, creating as it does additional consumer choice. Opponents of such entry should have the burden of demonstrating the contrary.

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[53] See LDDS at 8; OFII at 3; CTIA at 4-5 ("While well-meaning, U.S. administrative requirements can be viewed as a way to severely limit or bar foreign entities' access to the U.S. telecommunications market. The unintended consequence of such action is the imposition of equally burdensome, reciprocal requirements upon U.S. entities, thereby restricting or denying U.S. carriers' access into the foreign country's communications markets.").

[54] Motorola at iii, 10.

[55] AirTouch at 2.

These presumptions are particularly important with respect to Section 310(b)(4) proceedings, where the statute itself begs for such a construction. Currently, the Commission's implementation of that statutory provision is perceived by many foreign powers as a serious entry barrier. The Commission should rectify that situation in this proceeding. At a minimum, the Commission should craft a limited rule of "reciprocity," such that that foreign entry is presumptively in the public interest where the ownership interest of the foreign entrant is at a level that would be approved in the foreign country should a United States entrant seek to enter the foreign market.

Respectfully submitted,

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May 12, 1995

CERTIFICATE OF SERVICE

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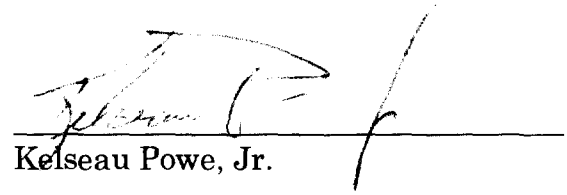

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